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## [H.R. 3495, Women's Public Health and Safety Act](#)

### FLOOR SITUATION

On Tuesday, September 29, 2015, the House will consider [H.R. 3495](#), *the Women's Public Health and Safety Act*, under a [closed rule](#). H.R. 3495 was introduced on September 11, 2015 by Rep. Sean Duffy (R-WI) and was referred to the Committee on Energy and Commerce.

### SUMMARY

H.R. 3495 increases states' flexibility in determining whether individuals or entities that perform or participate in the performance of elective abortions can participate as providers in their Medicaid programs.

### BACKGROUND

Under current law, "federal funds are generally not available to pay for abortions, except in cases of rape, incest, or endangerment of a mother's life."<sup>1</sup> The restriction is the result of legislative provisions like the Hyde Amendment, which have been included in federal funding measures for decades.<sup>2</sup> Like other federal programs, Medicaid is subject to the Hyde Amendment.<sup>3</sup>

Medicaid program guidance only dictates federal funds spent in Medicaid and "specifies that the Hyde Amendment does not prohibit a 'state, locality, entity, or private person' from paying for abortion services, nor does it prohibit managed care providers from offering abortion coverage or impact a state's or locality's ability to contract with a managed care provider for such coverage with state-only funds (as long as such funds are not the state share of Medicaid matching funds)."<sup>4</sup>

Under current federal law, Medicaid beneficiaries may obtain medical services "from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . .

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<sup>1</sup> See CRS Report—"[Federal Support for Reproductive Health Services: Frequently Asked Questions](#)," September 25, 2015 at 1.

<sup>2</sup> Id. at 1 and 2.

<sup>3</sup> Id. at 4.

<sup>4</sup> Id.

who undertakes to provide him such services." This provision is often referred to as the "any qualified provider" or "free choice of qualified provider" provision.

The U.S. Department of Health and Human Services has interpreted the "free choice of qualified provider" provision as not permitting states to exclude providers from the program solely on the basis of whether or not they perform elective abortions. HHS has ruled that, under current law, states are effectively forced to include in their Medicaid program providers who perform elective abortions (with non-federal reimbursements).

However, under current law, states have numerous authorities to exclude providers from participating in Medicaid. And indeed, in some situations, federal law requires exclusion.<sup>5</sup> States are required, for example, to exclude providers that commit fraud or certain criminal acts.

H.R. 3495, [as amended](#), would amend the Medicaid statute to allow a state to choose to establish criteria regarding the participation in its Medicaid program of institutions, agencies, entities, or persons who perform, or participate in the performance of, elective abortions. The definition of providers outlined in the bill is broad, giving states maximum flexibility to design program guidelines in the best interest of citizens within each state. Consistent with the spirit of the Hyde Amendment, this flexibility for states does not apply to cases in which health care providers only participate in the performance of, or perform, abortions resulting from rape or incest, or in which the life of the mother is endangered.

## **COST**

A preliminary Congressional Budget Office (CBO) cost estimate can be found [here](#).

## **STAFF CONTACT**

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

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<sup>5</sup> <http://oig.hhs.gov/exclusions/authorities.asp>